

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 409 Pub. Rec./Personal Identifying & Health Information/Public Educational Institution Employees

SPONSOR(S): Governmental Affairs Policy Committee, Jones and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	9 Y, 0 N, As CS	Williamson	Williamson
2)	PreK-12 Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Current law provides a number of public record exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys. The exemptions also protect identification and location information regarding the spouses and children of such employees. There is, however, no such exemption for current or former employees of an institution comprising a part of the state system of public education.

The bill creates a public record exemption for current and former employees of an institution comprising a part of the state system of public education. Personal identifying information of such current or former employee is confidential and exempt from public records requirements. In addition, personal health information of such employee also is confidential and exempt.

Confidential and exempt personal identifying information may be disclosed to collective bargaining agents representing employees in the performance of their statutory duties or to another governmental entity in the furtherance of its duties and responsibilities.

The bill defines the following terms: employee, personal identifying information, and personal health information.

The bill also provides for repeal of the exemption on October 2, 2014, unless reviewed and saved from repeal by the Legislature. It provides a public necessity statement as required by the State Constitution and it provides for retroactive application of the exemption.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Current Public Record Exemptions for Identification and Location Information

Current law provides a number of public record exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys.³ The exemptions also protect identification and location information regarding the spouses

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 119.071(4)(d), F.S.

and children of such employees.⁴ There is, however, no such exemption for current or former employees of an institution comprising a part of the state system of public education.

Current Public Record Exemptions for Social Security Numbers

Section 119.071(4)(a), F.S., provides a public record exemption for the social security numbers of a current or former agency⁵ employee when such number is contained in agency employment records. Section 119.071(5)(a), F.S., provides a general public record exemption for *all* social security numbers held by an agency. The general exemption provides for access to social security numbers under limited circumstances. In addition, the section provides that the general exemption for social security numbers does not supersede any other public record exemption for those numbers.⁶

Effect of Bill

Public Record Exemption

The bill creates a public record exemption for current and former employees of an institution comprising a part of the state system of public education. Personal identifying information of such employee is confidential and exempt⁷ from public records requirements. In addition, personal health information of such employee also is confidential and exempt.

Authorized Access

Confidential and exempt personal identifying information may be disclosed to collective bargaining agents representing employees in the performance of their statutory duties under chapter 447, F.S., which relates to labor organizations. In addition, such information may be disclosed to another governmental entity in the furtherance of its duties and responsibilities.

Definitions

The bill defines several terms. "Employee" means any current or former employee of an institution comprising a part of the state system of public education, including any teacher, administrator, educational support personnel,⁸ or member of a school board.

The bill also defines "personal identifying information" to mean an employee's social security number, home address, and telephone number. The exemption for social security numbers, however, is redundant of the exemptions provided in chapter 119, F.S.

The bill also defines "personal identifying information" to mean the name, age, home address, telephone number, social security number, photograph, and place of employment of the spouse or child of an employee, and the name and location of a school or day care facility attended by the child of an employee. It is unclear whether the employing educational institution would maintain pictures of an employee's spouse or child. Also, it is unclear what harm is caused from the release of the age of the child or spouse.

⁴ *Id.*

⁵ Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁶ Section 119.071(5)(a)11., F.S.

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

⁸ Section 1010.215(1)(b), F.S., defines "educational support personnel" to mean "district-based and school-based employees, including professional staff, technicians, secretaries, clerks, skilled workers, transportation employees, food service employees, and custodial and maintenance workers."

Finally, the bill defines "personal health information" to mean:

- A personal health condition of, injury to, history of personal medical diagnosis or treatment of, or any other information that relates to the health of an employee, or to the health of the spouse or child of an employee, contained in any materials, documents, or records held by a public educational institution in the state pursuant to the employee's participation in a group health insurance plan or program; and
- The existence or content of any individual coverage or status of coverage under an employee's group health insurance policy.

Future Review and Repeal

In accordance with the Open Government Sunset Review Act, the exemption will sunset on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Retroactive Application

The bill provides for retroactive application⁹ of the public record exemption.

Public Necessity Statement

The bill provides a public necessity statement as required by the State Constitution.¹⁰

B. SECTION DIRECTORY:

Section 1 creates s. 1012.312, F.S., to create a public record exemption for personal identifying information of an education employee and to create a public record exemption for personal health information of such employee.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on educational institutions, because staff responsible for complying with public records requests could require training related to the creation of the public record exemption. In addition, educational institutions could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of such institutions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁹ In 2001, the Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹⁰ Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides the purpose for the public record exemption.

The stated purpose for this exemption is to protect teachers and administrators, in addition to their family members, from harassment, stalking, or intimidation from students seeking retribution for the administering of disciplinary measures. In addition, the public necessity statement provides that the exemption is necessary to avoid an invasion of personal privacy. Based on the public necessity statement, it is unclear how disclosure of the age of the spouse or child could be used to harass, stalk, or intimidate or how it could be used to invade one's privacy.

Further, it is unclear whether an education institution collects the photograph of an employee's spouse or child. If photographs are not collected then an exemption should not be created to protect information that is not in possession of the custodial agency.

As such, the exemption could be considered overly broad.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Governmental Affairs Policy Committee adopted a strike-all amendment to HB 409 and reported the bill favorably as a Committee Substitute. The strike-all amendment:

- Narrowed the public record exemption by removing the exemption for an education employee's name, photograph, and employment status.
- Authorized the release of confidential and exempt information to another governmental entity in the furtherance of its duties and responsibilities.
- Provided for retroactive application of the public record exemption.